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Selected Developments in California Law

DeTomaso v. Pan American World Airways, Inc.: Preemption of State Tort Claims by the Railway Labor Act

The Railway Labor Act (RLA)¹ limits the remedies of a plaintiff to specific grievance and arbitration procedures.² In *DeTomaso v. Pan American World Airways, Inc.*,³ the California Supreme Court held that the RLA preempted state tort claims of intentional infliction of emotional distress and defamation.⁴ Preemption occurred because the court viewed the substantive aspect of the state tort claims as being governed by the grievance and arbitration procedures designated in a collective bargaining agreement.⁵ Consequently, the plaintiff was precluded from asserting state tort claims stemming from the collective bargaining agreement.⁶

Part I of this Note will examine the relationship between the RLA,⁷

1. Railway Labor Act, Pub. L. No. 69-257, 44 Stat. 577 (1926) (codified as amended at 45 U.S.C. §§ 151-188 (1982 & Supp. III 1985)). See *infra* notes 64-91 and accompanying text (discussion of the scope of the RLA). See *infra* notes 92-122 and accompanying text (discussion of RLA preemption).

2. 45 U.S.C. §§ 151-188 (1945). See *infra* notes 82-83, 165-67 and accompanying text (discussion of RLA grievance and arbitration procedures).

3. 43 Cal. 3d 517, 733 P.2d 614, 235 Cal. Rptr. 292 (1987).

4. *DeTomaso v. Pan Am. World Airways, Inc.*, 43 Cal. 3d 517, 520, 733 P.2d 614, 615, 235 Cal. Rptr. 292, 293 (1987).

5. *Id.* at 530, 733 P.2d at 622, 235 Cal. Rptr. at 300.

6. See *id.* at 520, 533, 733 P.2d at 615, 624, 235 Cal. Rptr. at 293, 302.

7. See *infra* notes 92-122 and accompanying text (discussion of RLA preemption).

the National Labor Relations Act (NLRA),⁸ the Labor Management Relations Act (LMRA),⁹ and the Federal Employers' Liability Act (FELA)¹⁰ in terms of labor law preemption.¹¹ Part II of this Note will summarize the facts of *DeTomaso*¹² and review the opinion.¹³ Finally, part III of this Note will explore the possible legal ramifications of the decision in *DeTomaso*.¹⁴

I. LEGAL BACKGROUND

A. Labor Law Preemption

The doctrine of federal preemption of state law originates from the supremacy clause of the United States Constitution.¹⁵ Preemption occurs when Congress manifests an intent to displace state law.¹⁶ Congress may preempt state law by express terms.¹⁷ Alternatively, congressional intent to preempt state law may be inferred when federal regulation is sufficiently comprehensive to eliminate the possibility of any state regulation.¹⁸ In areas that Congress has not

8. National Labor Relations Act, Pub. L. No. 74-198, 49 Stat. 449 (1935) (codified as amended at 29 U.S.C. §§ 151-169 (1982 & Supp. III 1985)). See *infra* notes 28-46 and accompanying text (discussion of NLRA preemption).

9. Labor Management Relations Act, Pub. L. No. 80-101, 61 Stat. 136 (1947) (codified as amended at 29 U.S.C. §§ 141-197 (1982 & Supp. III 1985)). See *infra* notes 47-63 and accompanying text (discussion of LMRA preemption).

10. Federal Employers' Liability Act, Pub. L. No. 60-100, 35 Stat. 65 (1908) (codified as amended at 45 U.S.C. §§ 51-60 (1982 & Supp. III 1985)). See *infra* notes 125-51 and accompanying text (discussion of FELA claims).

11. See *infra* notes 15-24 and accompanying text (discussion of labor law preemption).

12. See *infra* notes 155-85 and accompanying text (discussion of the facts in *DeTomaso*).

13. See *infra* notes 186-94 and accompanying text (discussion of the opinion in *DeTomaso*).

14. See *infra* notes 195-227 and accompanying text (discussion of the legal ramifications of the decision in *DeTomaso*).

15. U.S. CONST. art. VI, cl. 2. Clause 2 provides, in pertinent part: "[The United States] Constitution, and the laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." *Id.* See also *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 239-40 (1824) (Congressional power to regulate interstate commerce preempted the right of New York to issue exclusive ferry franchises, although the term "preemption" was never used).

16. See *California Sav. & Loan Ass'n v. Guerra*, 55 U.S.L.W. 4077, 4079 (U.S. January 13, 1987) (No. 85-494). Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act of 1978, did not preempt section 12954(b)(2) of the California Government Code because the state statute was not inconsistent with the purposes of the federal act and did not require the doing of an unlawful act under Title VII. *Id.* at 4080, 4083. See *infra* notes 19-21 and accompanying text (discussion of conflict preemption).

17. *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977). Section 408 of the Federal Meat Inspection Act expressly preempted section 12211 of the California Business and Professions Code and Article 5 of Title 4 of the California Administrative Code. *Id.* at 530-32.

18. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). The 1931 amendments to the United States Warehouse Act preempted an Illinois public utilities statute, except to the

completely displaced state regulation, federal law may nevertheless preempt state law to the extent that there exists an actual conflict between federal and state law.¹⁹ In conflict preemption, compliance with both federal and state regulations is physically impossible²⁰ or state law prohibits the accomplishment of the objectives of Congress.²¹

The commerce clause²² gives Congress the power to regulate labor relations in industries affecting interstate commerce.²³ Congress exercised the power to regulate labor relations by enacting the Railway Labor Act (RLA), the National Labor Relations Act (NLRA), the Labor Management Relations Act (LMRA), and the Labor-Management Reporting and Disclosure (Landrum-Griffin) Act (LMRDA).²⁴ A discussion of preemption under the NLRA,²⁵ the LMRA,²⁶ and the RLA²⁷ follows.

extent that the federal statute failed to cover the field or provide express exceptions in favor of state law. *Id.* at 234 & n.12, 235-37.

19. *Guerra*, 55 U.S.L.W. at 4080.

20. *E.g.*, *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-43 (1963). Dual compliance with California law, certifying the maturity of avocados based upon oil content, and federal regulations, certifying the maturity of avocados based upon picking date, size, and weight, was not physically impossible. *Id.* at 133-34, 139, 143.

21. *E.g.*, *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). The Pennsylvania Alien Registration Act of 1939 stood as an obstacle to the accomplishment of the full objectives of Congress, delineated in the Alien Registration Act of 1940. *Id.* at 72-74.

22. U.S. CONST. art. I, § 8, cl. 3. Clause 3 provides: "[Congress shall have the power] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." *Id.*

23. *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 31 (1937). The United States Supreme Court upheld the constitutional validity of the NLRA on the basis that the Act protected interstate commerce by guaranteeing employees the rights of self-organization and free choice in the designation of collective bargaining representatives. *Id.* at 41-42, 48. Under the affectation doctrine, Congress may regulate any activity carried on in one state or several which appreciably affects interstate commerce, directly or indirectly. *Id.* at 36-37. Congressional power to regulate pursuant to the commerce clause is limited to an industry which exerts a substantial economic effect on interstate commerce as determined by the aggregate effect of all business activity within the industry. *Wickard v. Filburn*, 317 U.S. 111, 125, 127-29 (1942) (the aggregate effect of wheat consumption by farmer growers constituted a substantial effect on interstate commerce).

24. Labor-Management Reporting and Disclosure (Landrum-Griffin) Act, Pub. L. No. 86-257, 73 Stat. 519 (1959) (codified as amended at 29 U.S.C. §§ 153, 158-160, 164, 186, 187, 401-531 (1982 & Supp. III 1985)). The LMRDA guarantees members of labor organizations the rights of freedom of speech and assembly, nomination of candidates, voting in union elections, attendance of union meetings, and participation in union deliberations. 29 U.S.C. § 411 (1959). The statute also requires unions, officers, employees, and others having certain dealings with unions to report specified information to the Secretary of Labor. 29 U.S.C. §§ 431-433 (1959). The LMRDA also establishes election procedures for union officers. 29 U.S.C. § 481 (1959).

25. *See infra* notes 28-46 and accompanying text (discussion of NLRA preemption).

26. *See infra* notes 47-63 and accompanying text (discussion of LMRA preemption).

27. *See infra* notes 92-122 and accompanying text (discussion of RLA preemption).

B. NLRA Preemption

The National Labor Relations Act (NLRA)²⁸ guarantees employees the rights of collective bargaining,²⁹ freedom of association,³⁰ self-organization,³¹ and designation of representatives to negotiate the terms and conditions of employment in industries affecting interstate commerce.³² NLRA preemption occurs in two distinct situations.³³ In *San Diego Building Trades Council v. Garmon*,³⁴ the United States Supreme Court ruled that the National Labor Relations Board (NLRB) possesses exclusive jurisdiction whenever a state attempts to regulate conduct that is either arguably prohibited by section 8³⁵ of the NLRA or arguably protected by section 7³⁶ of the NLRA.³⁷ Hence, a state claim which is arguably governed by section 7 or section 8 of the NLRA is preempted under the *Garmon* principle³⁸ with limited exceptions.³⁹

28. National Labor Relations Act, Pub. L. No. 74-198, 49 Stat. 449 (1935) (codified as amended at 29 U.S.C. §§ 151-169 (1982 & Supp. III 1985)).

29. 29 U.S.C. § 151 (1935). Section 151 provides, in relevant part: "It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of *collective bargaining* . . ." *Id.* (emphasis added).

30. *Id.* Section 151 provides, in relevant part: "It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred . . . by protecting the exercise by workers of full *freedom of association* . . ." *Id.* (emphasis added).

31. *Id.* Section 151 provides, in relevant part: "It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred . . . by protecting the exercise by workers of . . . *self-organization* . . ." *Id.* (emphasis added).

32. *Id.* Section 151 provides, in relevant part:

It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred . . . by protecting the exercise by workers of . . . *designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.*

Id. (emphasis added).

33. See generally Cox, *Recent Developments in Federal Labor Law Preemption*, 41 OHIO ST. L.J. 277, 277-78 (1980) (providing an exhaustive analysis of NLRA preemption).

34. 359 U.S. 236 (1959).

35. 29 U.S.C. § 158 (1959) (section 8 defines acts constituting unfair labor practices).

36. 29 U.S.C. § 157 (1959) (section 7 protects the rights of employees to self-organization and collective bargaining).

37. *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 245 (1959). The NLRA preempted a state claim by an employer against a union for picketing which was arguably governed by section 7 or section 8 of the NLRA. *Id.* at 246.

38. *Id.* at 245.

39. See, e.g., *Farmer v. Local 25, United Bhd. of Carpenters*, 430 U.S. 290, 295-303 & n.11, 305-06 (1977) (a state tort claim for intentional infliction of emotional distress against a union based on conduct constituting an unfair labor practice under sections 8(b)(1)(A) and 8(b)(2) of the NLRA is not *Garmon* preempted if the conduct is "outrageous"). See *infra*

A state claim based on conduct which is not arguably prohibited or protected by the NLRA may nevertheless be preempted if the application of state law would upset the balance of power⁴⁰ between labor and management established by the NLRA.⁴¹ Bargaining process preemption⁴² and bargaining agreement preemption⁴³ represent two theories which prevent upsetting the balance of power.⁴⁴ Bargaining process preemption displaces state laws that affect parties presently engaged in collective bargaining.⁴⁵ Bargaining agreement preemption overrides state regulation that interferes with the rights and duties of parties to a collective bargaining agreement.⁴⁶

notes 106-08 and accompanying text (further discussion of *Farmer*); *Vaca v. Sipes*, 386 U.S. 171, 176-88 (1967) (a claim for breach of the duty of fair representation against a union is not *Garmon* preempted despite the fact that the conduct of the union constitutes an unfair labor practice under section 8(b) of the NLRA); *Smith v. Evening News Ass'n*, 371 U.S. 195, 197-201 (1962) (a claim for breach of a collective bargaining agreement arising under section 301 of the LMRA based on wage discrimination constituting an unfair labor practice pursuant to section 8(a)(3) of the NLRA is not *Garmon* preempted); *United Auto. Workers v. Wisconsin Employment Relations Bd.*, 351 U.S. 266, 270, 275 (1956) (the state of Wisconsin was granted an injunction against violent union conduct amounting to an unfair labor practice under section 8(b)(1) of the NLRA); *United Constr. Workers v. Laburnum Constr. Corp.*, 347 U.S. 656, 658, 668-69 (1954) (an employer's state claim for damages against a labor union based on conduct constituting an unfair labor practice under section 8(b)(1)(A) of the LMRA was not preempted by the LMRA because the conduct involved intimidation and threats of violence). See also *Garmon*, 359 U.S. at 247, 248 & n.6 (court distinguishes *Laburnum*).

40. Cox, *Labor Law Preemption Revisted*, 85 HARV. L. REV. 1337, 1352-53 (1972). Federal labor laws provides a framework within which employees can organize themselves and bargain collectively with employers concerning the terms and conditions of employment. *Id.* The framework strikes a balance of protection, prohibition, and *laissez faire* which would be upset if a state could enforce views concerning accommodation of the same interests. *Id.* at 1352. The legal framework for self-organization and collective bargaining, established by the NLRA, determines the extent to which the conduct of employers and unions should be regulated. *Id.* The freedom to reject the terms of the collective bargaining agreement proposed by the other party implies freedom to resort to economic pressures, such as lockouts, strikes, boycotts, and picketing. *Id.* at 1353. State law that restricts the objectives for which economic pressure can be applied or the forms of pressure which are permissible, pursuant to the NLRA, shifts the balance of power in favor of management or the union. *Id.*

41. Cox, *supra* note 33, at 278 (an exhaustive analysis of NLRA preemption).

42. Comment, *NLRA Preemption of State Wrongful Discharge Claims*, 34 HASTINGS L.J. 635, 644-47 (1983) (discussion of bargaining process preemption and bargaining agreement preemption).

43. *Id.*

44. See *id.*

45. *Id.* See also *New York Tel. Co. v. New York State Dep't of Labor*, 440 U.S. 519, 540-46 (1979) (the NLRA did not preempt the unemployment insurance system in New York authorizing the payment of unemployment benefits to striking employees); *Lodge 25, Int'l Ass'n of Machinists v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132, 133, 148-51 (1976) (the NLRA preempts states from enjoining unions and their members from refusing to work overtime pursuant to a union policy designed to put economic pressure on the employer in collective bargaining negotiations); *Local 20, Teamsters v. Morton*, 377 U.S. 252, 256-61 (1964) (section 303 of the LMRA preempts state claims for peaceful secondary picketing even if the conduct on the part of the union is not arguably prohibited by section 8 of the NLRA or arguably protected by section 7).

46. Comment, *supra* note 42, at 644. See also *Malone v. White Motor Corp.*, 435 U.S. 497, 504-14 (1978) (the NLRA does not preempt state laws regulating pension plans that are the subject of a collective bargaining agreement); *Local 24, Int'l Bhd. of Teamsters v. Oliver*, 358

C. LMRA Preemption

Section 301 of the Labor Management Relations Act (LMRA)⁴⁷ provides for the enforceability of collective bargaining agreements.⁴⁸ The parties may specify the particular methods of enforcing the agreement, including conciliation, mediation, and arbitration.⁴⁹ Courts construe arbitration clauses as requiring contracting parties to exhaust contractual grievance and arbitration procedures prior to seeking judicial redress,⁵⁰ unless arbitration is expressly designated as a non-exclusive remedy.⁵¹

*Local 174, Teamsters v. Lucas Flour Co.*⁵² is the first case to analyze the preemptive effect of section 301.⁵³ *Lucas Flour* held that section 301 of the LMRA governs the resolution of labor contract violations.⁵⁴ Section 301 preempts state laws which purport to define the meaning or scope of a term in a labor contract.⁵⁵ *Allis-Chalmers Corp. v. Lueck*⁵⁶ extended the preemption principle articulated in *Lucas Flour* to include suits other than for breach of contract.⁵⁷ Under *Allis-Chalmers*, a state claim which is substantially dependent upon the terms of a labor contract is treated as a section 301 claim and preempted by federal labor-contract law.⁵⁸ The Court reasoned

U.S. 283, 294 (1959) (sections 7 and 8 of the NLRA preempt state antitrust laws that prohibit parties from exercising collective bargaining rights enumerated in a collective bargaining agreement).

47. Labor Management Relations Act, Pub. L. No. 80-101, 61 Stat. 136 (1947) (codified as amended at 29 U.S.C. §§ 141-197 (1982 & Supp. III 1985)). Section 301 of the LMRA is set forth at Title 29 of the United States Code section 185(a) (1947). Section 185(a) states, in pertinent part: "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce . . . may be brought in any district court of the United States having jurisdiction of the parties." 29 U.S.C. § 185(a) (1947).

48. *Textile Workers Union of Am. v. Lincoln Mills*, 353 U.S. 448, 451, 454 (1957) (statutory recognition of the collective bargaining agreement as an enforceable contract will promote industrial peace by imposing a higher degree of responsibility upon the parties to the agreement).

49. 29 U.S.C. § 171 (1947) (declaration of the purpose and policy of the NLRA).

50. *Republic Steel v. Maddox*, 379 U.S. 650, 652-53 (1965). The LMRA preempted Maddox' claim for severance pay because Maddox failed to exhaust the grievance and arbitration procedures enumerated in the collective bargaining agreement prior to instituting the lawsuit. *Id.* at 659.

51. *Id.* at 657-59 (the parties did not expressly designate arbitration as a nonexclusive remedy).

52. 369 U.S. 95 (1962).

53. *Local 174, Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 102 (1962) (section 301 of the LMRA preempted a suit by an employer against a union for damages caused by a strike).

54. *Id.*

55. *Id.* at 103. The union expressly agreed in the collective bargaining agreement to settle grievances pertaining to strikes by final and binding arbitration. *Id.* at 106.

56. 471 U.S. 202 (1985).

57. *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 212, 220 (1985). *Allis-Chalmers* involved a tort claim for bad faith breach of contract. *Id.* at 206.

58. *Id.* at 212, 220. The United States Supreme Court expressly rejected the holding of the Wisconsin Supreme Court that a claim for bad faith breach of contract is legally independent

that where federal policy intends to provide a single remedy for a collection of events, the plaintiff cannot circumvent that exclusive remedy by relying on state law tort remedies.⁵⁹

The United States Supreme Court, in *Caterpillar, Inc. v. Williams*,⁶⁰ held that a suit for breach of an individual employment contract which is independent of a subsequent collective bargaining agreement is not preempted by section 301.⁶¹ According to *Caterpillar*, section 301 does not preempt a state claim that bears no relationship to a collective bargaining agreement except that an individual covered by the agreement asserts the claim.⁶² Accordingly, *Caterpillar* reaffirms the preemption principle of *Allis-Chalmers*.⁶³

D. Scope of the RLA

Congress enacted the Railway Labor Act (RLA)⁶⁴ in 1926 in an attempt to stabilize industrial relations⁶⁵ and extend periods during which disputes among employees, employers, and unions could be resolved peacefully.⁶⁶ In 1936, Congress extended the coverage of the RLA beyond the railroad industry⁶⁷ to encompass the airline industry.⁶⁸ The purposes of the RLA are to promote the free flow of

of a section 301 claim. *Id.* at 215-16. The Wisconsin Supreme Court suggested that a bad faith tort claim could be unrelated to a section 301 contractual claim. *Lueck v. Aetna Life Ins. Co.*, 116 Wis. 2d 559, 566, 342 N.W.2d 699, 703 (1984). To illustrate, an insurer could pay a claim as required under a contract but still cause injury through unreasonably delaying payment. *Id.* at 574, 342 N.W.2d at 707. The United States Supreme Court indicated that the distinction of the Wisconsin Supreme Court was based upon the fact that the implied duty to act in good faith is different from the explicit contractual duty to pay. *Allis-Chalmers*, 471 U.S. at 216. The United States Supreme Court ruled that the extent of either duty ultimately depends upon the terms of the contract which must be interpreted according to federal law. *Id.* Moreover, if section 301 were not understood to preempt tort claims for bad faith breach of contract, then the role of an arbitrator could be easily bypassed since nearly any alleged willful breach of contract can be restated as a tort claim for bad faith breach of contract. *Id.* at 219.

59. See *Allis-Chalmers*, 471 U.S. at 212, 220. Cf. *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 244-45 (1959) (allowing states to control conduct which is the subject of national regulation would frustrate the purposes of federal law). See *supra* notes 34-39 and accompanying text (discussion of *Garmon* preemption under the National Labor Relations Act (NLRA)).

60. 55 U.S.L.W. 4804 (U.S. June 9, 1987) (No. 86-526).

61. *Caterpillar, Inc. v. Williams*, 55 U.S.L.W. 4804, 4806 (U.S. June 9, 1987) (No. 86-526).

62. *Id.* at 4806 n.10. Williams' individual employment contract, giving rise to a state claim, was separate and independent of the subsequent collective bargaining agreement. *Id.* at 4806.

63. *Id.* at 4806 & n.10.

64. Railway Labor Act, Pub. L. No. 69-257, 44 Stat. 577 (1926) (codified as amended at 45 U.S.C. §§ 151-188 (1982 & Supp. III 1985)).

65. 9 KHEEL, LABOR LAW (MB) § 50.02, at 50-4 (1986).

66. *Id.*

67. 45 U.S.C. § 151 (1926).

68. 45 U.S.C. § 181 (1936).

interstate commerce,⁶⁹ to guarantee the rights of freedom of association⁷⁰ and self-organization,⁷¹ and to provide for the prompt and orderly settlement of major⁷² and minor disputes.⁷³ A "major dispute" arises out of the formation or change of a collective bargaining agreement covering rates of pay, rules, or working conditions.⁷⁴ A "minor dispute" arises out of grievances regarding the interpretation or application of agreements concerning rates of pay, rules, or working conditions.⁷⁵

A comparison of the purposes of the RLA,⁷⁶ the NLRA,⁷⁷ and the LMRA⁷⁸ indicates a relationship among the statutes.⁷⁹ The purposes of the RLA are analogous to the purposes of the NLRA and LMRA.⁸⁰ Only the LMRA analogue is implicated in *DeTomaso v. Pan Amer-*

69. 45 U.S.C. § 151(a)(1) (1926). Section 151(a)(1) provides: "[A purpose of the RLA is] [t]o avoid any interruption to commerce or to the operation of any carrier engaged therein." *Id.*

70. 45 U.S.C. § 151(a)(2) (1926). Section 151(a)(2) provides: "[A purpose of the RLA is] to forbid any limitation upon the freedom of association among employees or any denial as a condition of employment or otherwise, of the right of employees to join a labor organization." *Id.*

71. 45 U.S.C. § 151(a)(3) (1926). Section 151(a)(3) provides: "[A purpose of the RLA is] to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act." *Id.*

72. See 45 U.S.C. § 151(a)(5) (1926). Section 151(a)(5) provides: "[A purpose of the RLA is] to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions." *Id.* Section 151(a)(5) disputes have been termed "major disputes." See, e.g., *Detroit & T.S.L. R.R. v. United Transp. Union*, 396 U.S. 142, 145 n.7 (1969). A union proposal to amend the collective bargaining agreement invokes the "major dispute" settlement procedures of the RLA. *Id.* at 145.

73. See 45 U.S.C. § 151(a)(4) (1926). Section 151(a)(4) provides: "[A purpose of the RLA is] to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions." *Id.* Section 151(a)(4) disputes have been termed "minor disputes." See, e.g., *Elgin, J. & E. R.R. v. Burley*, 325 U.S. 711, 723 (1945) (defining the term "minor dispute").

74. *Detroit & T.S.L. R.R.*, 96 U.S. at 145 n.7.

75. *Burley*, 325 U.S. at 723.

76. 45 U.S.C. § 151(a) (1926) (purposes of the RLA). See *supra* text accompanying notes 69-73, 76-80 (discussion of the purposes of the RLA).

77. 29 U.S.C. § 151 (1935) (purposes of the NLRA). See *supra*, text accompanying notes 28-32 (discussion of the purposes of the NLRA).

78. 29 U.S.C. § 171(a) (1947) (purposes of the LMRA). See *supra*, text accompanying notes 47-48 (discussion of the purpose of section 301 of the LMRA).

79. Compare Railway Labor Act, 45 U.S.C. § 151(a) (1926) (purposes of the RLA) with National Labor Relations Act, 29 U.S.C. § 151 (1935) (purposes of the NLRA) and Labor Management Relations Act, 29 U.S.C. § 171(a) (1947) (purposes of the LMRA).

80. Compare Railway Labor Act, 45 U.S.C. § 151(a)(2), (3) (1926) (guaranteeing the rights of freedom of association and self-organization) with National Labor Relations Act, 29 U.S.C. § 151 (1935) (guaranteeing employees the right of collective bargaining, freedom of association, self-organization, and designation of representatives to negotiate the terms and conditions of employment whenever a denial would affect interstate commerce). Compare Railway Labor Act, 45 U.S.C. § 151(a)(4), (5) (1926) (providing for the prompt and orderly settlement of major and minor disputes) with Labor Management Relations Act, 29 U.S.C. § 171(a) (1947) (providing for the enforceability of collective bargaining agreements).

*ican World Airways, Inc.*⁸¹

The RLA requires any collective bargaining agreement reached between an employer and a union to include detailed grievance and arbitration procedures.⁸² The grievance and arbitration procedures of the RLA must be utilized to resolve "minor disputes."⁸³ Minor disputes are to be settled on the property of the carrier.⁸⁴ Either party may take the matter before the Adjustment Board⁸⁵ for resolution if a settlement cannot be reached.⁸⁶

Awards of the Adjustment Board are final and binding upon both parties to the dispute.⁸⁷ Finality of Adjustment Board decisions promotes stability in the air and rail carrier industries.⁸⁸ Consequently, courts do not intervene into the area of minor disputes except to determine the validity of an underlying contract,⁸⁹ to enforce an Adjustment Board award,⁹⁰ or to provide limited judicial review.⁹¹

81. Compare Labor Management Relations Act, 29 U.S.C. § 171(a) (1947) (purposes of the LMRA) with *DeTomaso v. Pan Am. World Airways, Inc.*, 43 Cal. 3d 517, 526-33, 733 P.2d 614, 618-24, 235 Cal. Rptr. 292, 296-302 (1987) (demonstrating that only the LMRA analogue is implicated).

82. 45 U.S.C. §§ 151-188 (1926) (the RLA does not require the parties to be part of a collective bargaining agreement, only that the parties bargain in good faith).

83. 45 U.S.C. § 153 (1926). Resolution of "major disputes" is governed by separate grievance procedures. See 45 U.S.C. § 155 (1926).

84. 45 U.S.C. § 153 First (1926). "Carrier" refers to the airline or railroad employer. See *id.* See also 45 U.S.C. § 151 First (1926) (defining rail "carrier"). See also 45 U.S.C. § 181 (1936) (extending the coverage of the RLA to include air carriers).

85. *Id.* (the statute establishes the National Railroad Adjustment Board (NRAB) as a permanent national board for railroad labor disputes). No permanent national board has been established for the airline industry. See 45 U.S.C. § 184 (1936) (the statute does not establish a permanent national board). Instead, individual carriers and their employees are under a statutory duty to establish system, group, or regional boards of adjustment. *Id.*

86. 45 U.S.C. § 153 First (i) (1926) (describing the procedures for handling minor disputes).

87. 45 U.S.C. § 153 First (m) (1926) (describing the procedures concerning and the effects resulting from awards by the Adjustment Board).

88. *Union Pac. R.R. v. Sheehan*, 439 U.S. 89, 94 (1978). The determination by the Adjustment Board that Sheehan had not filed his appeal to the Board within the time requirements of the collective bargaining agreement was final and binding upon the parties, pursuant to section 153 First (q) of the RLA. *Id.* at 95.

89. See, e.g., *Int'l Ass'n of Machinists v. Central Airlines Inc.*, 372 U.S. 682, 691, 695 (1963) (the enforceability of an Adjustment Board award required a determination of the validity of a contract between an airline and a labor union pursuant to section 204 of the RLA).

90. See, e.g., *Bhd. of R.R. Trainmen v. Denver & R.G.W. R.R.*, 370 F.2d 833, 834, 836 (10th Cir. 1966) (remanding the case to the district court to enforce an award by the National Railroad Adjustment Board (NRAB) pursuant to section 153 First of the RLA).

91. 45 U.S.C. § 153 First (q) (1926). Section 153 First (q) provides, in relevant part:

If any employee . . . or any carrier . . . is aggrieved by any of the terms of an award [of any division of the Adjustment Board] . . . then such employee . . . or carrier may file in any United States district court . . . a petition for review of the [division's] order . . . On such review, the findings and order of the [division] shall be conclusive on the parties, except that the order of the division may be set aside, in whole or in part, . . . for failure of the [division] to comply with the requirements of this chapter, for failure of the order to conform, or confine itself, to matters

E. RLA Preemption

Congress did not provide in express terms that the RLA preempts state regulation.⁹² Rather, RLA preemption evolved out of federal case law, beginning with the decision of *Andrews v. Louisville & Nashville R.R.*⁹³ In *Andrews*, the plaintiff brought an action against his employer for wrongful discharge based on the refusal of his employer to allow the plaintiff to return to work following recovery from an injury.⁹⁴ The United States Supreme Court held that the RLA preempted the wrongful discharge claim because the claim was dependent upon an interpretation of a collective bargaining agreement.⁹⁵ The Supreme Court reasoned that the substance of the claim was breach of an employment contract,⁹⁶ not a tortious discharge.⁹⁷ Under *Andrews*, a proper RLA preemption analysis examines the substance,⁹⁸ not the characterization,⁹⁹ of a state claim.¹⁰⁰

Two different approaches exist for examining the substance of a state claim to determine whether the claim constitutes a minor dispute so as to be preempted by the RLA.¹⁰¹ *Magnuson v. Burlington*

within the scope of the [division's] jurisdiction, or for fraud or corruption by a member of the [division] making this order.

Id. See also, *Andrews v. Louisville & N. R.R.*, 406 U.S. 320, 325 (1972) (in some situations, the RLA makes the remedy for the resolution of minor disputes exclusive, rather than merely requiring exhaustion of remedies in one forum before resorting to another).

92. See 45 U.S.C. §§ 151-188 (1945) (the statute does not mention preemption).

93. 406 U.S. 320 (1972).

94. *Andrews*, 406 U.S. at 320-21.

95. *Id.* at 324 (to determine whether the plaintiff was wrongfully discharged required an interpretation of the collective bargaining agreement).

96. *Id.* at 323-24 (the employment contract was governed by a collective bargaining agreement which specified mandatory grievance procedures for disputes concerning discharge).

97. *Id.* at 324 (a wrongful discharge implies a breach of a contractual standard).

98. *Id.* at 323-24. The "substance" of a claim is determined by the underlying facts, not by the particular manner in which the plaintiff chooses to characterize those facts. See *id.*

99. *Id.* (the plaintiff characterized his claim as wrongful discharge instead of breach of employment contract).

100. *Id.* (the United States Supreme Court refused to allow the plaintiff to characterize his claim for breach of employment contract as a claim for wrongful discharge in order to avoid RLA preemption). The distinction between substance and characterization ("substance/characterization distinction") has been followed for torts other than for wrongful discharge. See, e.g., *Magnuson v. Burlington N., Inc.*, 576 F.2d 1367, 1368-69 (9th Cir. 1978) (involving the torts of conspiracy and intentional infliction of emotional distress). See *infra* notes 102-09 and accompanying text (discussion of the *Magnuson* rule). But see *Raybourn v. Burlington N. R.R.*, 602 F. Supp. 385, 387-88 (W.D. Mo. 1985) (involving the torts of false arrest and imprisonment). See *infra* notes 110-12 and accompanying text (discussion of the *Raybourn* rule).

101. See *Magnuson v. Burlington N., Inc.*, 576 F.2d 1367, 1369 (9th Cir. 1978). See *Raybourn v. Burlington N. R.R.*, 602 F. Supp. 385, 387-88 (W.D. Mo. 1985). See *infra* notes

*Northern, Inc.*¹⁰² provides that claims based on a matrix of facts¹⁰³ which are inextricably intertwined¹⁰⁴ with the grievance and arbitration procedures of a collective bargaining agreement are preempted by the RLA.¹⁰⁵ In *Magnuson*, the court observed that an exception to

102-09 and accompanying text (discussion of the *Magnuson* rule). See *infra* notes 110-12 and accompanying text (discussion of the *Raybourn* rule). The question of whether the RLA preempts state claims relating to major disputes never arises because major disputes do not give rise to state claims.

102. *Magnuson*, 576 F.2d at 1367 (9th Cir. 1978). *Magnuson*, a train dispatcher, filed a claim against his railroad employer and other railroad supervisors for intentional infliction of emotional distress allegedly arising out of a conspiracy by the railroad to cover up its negligence pertaining to a head-on train collision resulting in deaths and personal injuries. *Id.* at 1368. Subsequent to the train collision, the railroad conducted an investigation and concluded that *Magnuson*, who was on duty at the time of the collision, was responsible for the accident. *Id.* Thereafter, *Magnuson* was discharged. *Id.* The court found that the gravamen of *Magnuson's* claim for intentional infliction of emotional distress constituted a minor dispute subject to the exclusive jurisdiction of the RLA. *Id.* The court noted that *Magnuson's* alleged emotional distress was an incident of the alleged wrongful discharge rather than the result of the alleged conspiracy. *Id.* at 1369. The court refused to allow *Magnuson* to characterize the claim for wrongful discharge as a claim for tortious conspiracy and intentional infliction of emotional distress. *Id.* The recognition by the *Magnuson* court of the "substance/characterization distinction" is a paradigm case of proper RLA preemption analysis under *Andrews*. See *supra* text accompanying notes 93-100 (discussion of proper RLA preemption analysis under *Andrews*).

103. *Magnuson*, 576 F.2d at 1369 (a "matrix of facts" denotes the underlying set of facts comprising the claim).

104. *Id.* "Inextricably intertwined" means 'closely related to' or 'governed by.' See *id.* at 1369-70 (the court defines "inextricably intertwined" as "arguably" governed by or has a "not obviously insubstantial" relationship to).

105. *Id.* at 1369-70 (claim for intentional infliction of emotional distress inextricably intertwined with the grievance and arbitration procedures of the collective bargaining agreement and preempted by the RLA). See also *Stephens v. Norfolk & W. Ry.*, 792 F.2d 576, 580 (6th Cir. 1986) (claim for violation of the Michigan Handicapper's Civil Rights Act inextricably intertwined with the collective bargaining agreement and preempted by the RLA). *Id.* at 581; *Jackson v. Consol. R.R. Corp.*, 717 F.2d 1045, 1053 (7th Cir. 1983) (claim for retaliatory discharge inextricably intertwined with the collective bargaining agreement and preempted by the RLA). See *id.* at 1054; *Beers v. Southern Pac. Transp. Co.*, 703 F.2d 425, 428-29 (9th Cir. 1983) (claim for intentional infliction of emotional distress constituted a minor dispute within the exclusive province of the RLA). *Id.* at 429; *Schroeder v. Trans World Airlines, Inc.*, 702 F.2d 189, 192 (9th Cir. 1983) (state claim for wrongful demotion involved a minor dispute preempted by the RLA); *Gray v. Chessie Sys.*, 588 F. Supp. 1334, 1336 (D. Md. 1984) (claim for intentional interference with contractual relations involved a minor dispute so as to be preempted by the RLA). *Id.* at 1337; *Schwadron v. Trans World Airlines, Inc.*, 585 F. Supp. 1371, 1373-74 (W.D. Pa. 1984) (claim for negligent misrepresentation inextricably intertwined with the collective bargaining agreement and preempted by the RLA); See *Spencer v. Missouri Pac. R.R.*, 581 F. Supp. 1220, 1221 (E.D. Mo. 1984) (claim for conspiracy to interfere with employment rights inextricably intertwined with the collective bargaining agreement and preempted by the RLA); *Majors v. United States Air, Inc.*, 525 F. Supp. 853, 856-57 (D. Md. 1981) (claims for false imprisonment and defamation inextricably intertwined with the collective bargaining agreement and preempted by the RLA); *Carson v. Southern Ry.*, 494 F. Supp. 1104, 1111 (D.S.C. 1979) (claim for defamation constituted a minor dispute within the exclusive jurisdiction of the RLA Adjustment Board). *Id.* at 1112; *Downing v. The Travelers Ins. Co.*, 107 Idaho 511, 516-17, 691 P.2d 375, 380-81 (1984) (claim for death benefits under an insurance policy inextricably intertwined with the collective bargaining

federal labor law preemption had been announced in *Farmer v. Local 25, United Brotherhood of Carpenters*,¹⁰⁶ which dealt with NLRA preemption.¹⁰⁷ The *Farmer* exception states that federal law does not preempt claims based on conduct which is so outrageous that no reasonable person in a civilized society should be expected to endure the conduct.¹⁰⁸ Consequently, a state claim which is inextricably intertwined with a collective bargaining agreement and based on "outrageous" conduct is not preempted under the *Magnuson* rule.¹⁰⁹ In contrast, *Raybourn v. Burlington Northern R.R.*¹¹⁰ states that the RLA does not preempt state tort claims that are legally independent of the collective bargaining agreement.¹¹¹ A legally independent state

agreement and preempted by the RLA); *Burkin v. Burlington N. R.R.*, 690 S.W.2d 508 (1985) (claims for emotional distress and wrongful discharge involved minor disputes so as to be preempted by the RLA); *Gonzalez v. Northwest Airlines, Inc.*, 201 N.J. Super. 422, 427-28, 493 A.2d 547, 550 (1985) (claim for wrongful discharge constituted a minor dispute subject to the exclusive jurisdiction of the RLA).

106. 430 U.S. 290 (1977). An employee, Hill, alleged that union officials discriminated against him in referrals for employment in violation of a collective bargaining agreement and a membership contract. *Id.* at 292-93. In addition, Hill claimed that the officials had engaged in outrageous conduct, threats, and intimidation, causing Hill to suffer grievous emotional distress and physical injury. *Id.* The United States Supreme Court held that the NLRA did not preempt Hill's state tort claim for intentional infliction of emotional distress even though the conduct of the union could arguably be characterized as an unfair labor practice. *Id.* at 302. The Court emphasized, however, that Hill could not recover damages for the hiring discrimination, but only for conduct unrelated to the discrimination such as the particularly abusive manner in which the discrimination was implemented. *Id.* at 305. Under the *Farmer* test, a state tort claim which does not arise out of the employment relation or is based on "outrageous" conduct is not preempted by the NLRA. *Id.*

107. *Magnuson v. Burlington N., Inc.*, 576 F.2d 1367, 1369 (9th Cir. 1978) (*Farmer* created a narrow exception to federal preemption). *Magnuson* recognized that *Farmer*, an NLRA preemption case, has applicability in the context of RLA preemption. *Id.* However, the plaintiff's claim did not fit within the *Farmer* exception. *Id.*

108. *Farmer*, 430 U.S. at 302 (the abusive manner in which the union implemented hiring discrimination against Hill constituted "outrageous" conduct). "Outrageous" conduct under the *Farmer* exception may give rise to claims other than intentional infliction of emotional distress. See, e.g., *DeTomaso v. Pan Am. World Airways, Inc.*, 43 Cal. 3d 517, 531, 733 P.2d 614, 622, 235 Cal. Rptr. 292, 300 (1987) (outrageous conduct by an employer during the course of a disciplinary investigation pursuant to the RLA may give rise to a state tort claim of defamation). See *infra* notes 155-94 and accompanying text (discussion of the *DeTomaso* case).

109. See *Magnuson*, 576 F.2d at 1369. The *Magnuson* rule is actually a reformulation of the *Farmer* test. See *supra* text accompanying notes 106-08 (discussion of the *Farmer* test). If a state tort claim does not arise out of the employment relation, then the claim is not inextricably intertwined with the collective bargaining agreement and not preempted under the *Magnuson* rule. See *Magnuson*, 576 F.2d at 1369. Additionally, a state tort claim based on conduct which is inextricably intertwined with the collective bargaining agreement is not preempted under the *Magnuson* rule if the conduct is "outrageous" as in *Farmer*. *Id.*

110. 602 F. Supp. 385 (W.D. Mo. 1985).

111. *Id.* at 387-88. Raybourn, a railroad employee, brought an action against his railroad employer claiming false arrest and imprisonment. *Id.* at 386. When representatives of the railroad found Raybourn sleeping in a caboose during working hours, they suspected Raybourn

tort claim must include a substantial state interest and not interfere with the purposes of the RLA.¹¹²

The *Raybourn* test and the *Andrews* test to determine legal independency are inconsistent.¹¹³ Under *Andrews*, a claim is legally independent of the collective bargaining agreement only when the underlying facts do not give rise to a claim for breach of the collective bargaining agreement.¹¹⁴ *Andrews* precludes a substantive claim for breach of a collective bargaining agreement from being characterized as a legally independent claim, such as tortious discharge.¹¹⁵ Thus, a plaintiff may not escape RLA preemption by "artful pleading."¹¹⁶

Under *Raybourn*, a "typical tort claim" is legally independent of the collective bargaining agreement.¹¹⁷ The court ruled the the plaintiff

to be intoxicated. *Id.* at 385-86. The representatives took Raybourn to a hospital for a blood alcohol test. *Id.* at 386. Raybourn refused to take the test and alleged that the representatives refused to let Raybourn speak with his lawyer or his wife who was a patient in the hospital. *Id.* The representatives notified the police that Raybourn was under the influence of alcohol and would possibly be driving home from the hospital. *Id.* The police subsequently arrested Raybourn for disorderly conduct, which resulted in Raybourn spending five to six hours in jail until he was released on bond. *Id.* Although the police dismissed the disorderly conduct charge, the railroad terminated Raybourn from employment. *Id.* Raybourn appealed his termination, pursuant to the grievance and arbitration procedures of a collective bargaining agreement. *Id.* The termination was upheld on appeal. *Id.* Raybourn filed suit in state court which was later removed to federal court. *Id.* The district court held that Raybourn's tort claims for false arrest and imprisonment were legally independent of any contractual claim for breach of the collective bargaining agreement. *Id.* at 387. Thus, the RLA did not preempt Raybourn's tort claims. *Id.*

112. *Id.* at 388 (Missouri has a substantial state interest in protecting its citizens from false arrest and imprisonment, and these tort claims will not interfere with the purposes of the RLA).

113. Compare *Raybourn v. Burlington N. R.R.*, 602 F. Supp. 385, 387-88 (W.D. Mo. 1985) (using the term "legally independent" claim) with *Andrews v. Louisville & N. R.R.*, 406 U.S. 320, 324 (1972) (using the term "sufficiently different" claim). The *Magnuson* court did not formulate a test for legal independency. See *Magnuson v. Burlington N., Inc.*, 576 F.2d 1367, 1369-70 (9th Cir. 1978). Instead, the court impliedly adopted the *Andrews* test for legal independency when the court applied the *Andrews* "substance/characterization distinction." See *id.* at 1369 (Magnuson was precluded from characterizing his substantive claim for wrongful discharge as a claim for tortious conspiracy and intentional infliction of emotional distress). See *supra* text accompanying notes 98-100, 102 (discussion of the *Andrews* "substance/characterization distinction").

114. See *Andrews*, 405 U.S. at 324.

115. *Id.* at 323-24. See also *Magnuson*, 576 F.2d at 1369 (the substance is determined by whether the claim arises out of a matrix of facts which are inextricably intertwined with the grievance and arbitration procedures of a federal collective bargaining agreement). See *supra* text accompanying notes 98-100, 102 (discussion of the "substance/characterization distinction" concerning RLA claims). Cf. *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 215-16 (1985) (a claim for bad faith breach of contract is not legally independent of a LMRA section 301 contractual claim). See *supra* note 58 and accompanying text (discussion of legal independency concerning claims relating to section 301 of the LMRA).

116. *Magnuson*, 576 F.2d at 1369 (artfully pleading a substantive claim for wrongful discharge as a claim for tortious conspiracy and intentional infliction of emotional distress did not prevent the claim from being preempted by the RLA).

117. *Raybourn*, 602 F. Supp. at 387 (providing no explanation of what constitutes a

was not required to pursue his arbitrable claim for wrongful discharge.¹¹⁸ Moreover, the court held that the RLA did not preempt Raybourn's tort claims for false arrest and imprisonment despite the fact that the claims were factually related to his claim for breach of contract.¹¹⁹ The court in *Raybourn* emphasized that the plaintiff did not simply recharacterize claims arising from a discharge.¹²⁰ In addition, the court implied that the conduct of the railroad was outrageous and thus within the *Farmer* exception.¹²¹ In *DeTomaso*, the court posited that the *Raybourn* court incorrectly focused on the characterization, as opposed to the substance, of the claim contrary to *Andrews*.¹²²

This Note will return to an analysis of the inconsistency between *Raybourn* and *Andrews* subsequent to a discussion of the *DeTomaso* case.¹²³ A discussion of the relationship between FELA claims and RLA preemption follows.¹²⁴ FELA cases will be presented and then analyzed under the *Magnuson* rule.

F. FELA Claims

The Federal Employers' Liability Act (FELA)¹²⁵ creates a tort remedy for railroad workers who suffer personal injuries as a result of the negligence of their employer or fellow employees.¹²⁶ In *Atchison, Topeka and Santa Fe Ry. v. Buell*,¹²⁷ the United States Supreme

"typical tort" other than declaring Raybourn's claims for false arrest and imprisonment as typical torts).

118. *Id.*

119. *Id.* Raybourn's wrongful discharge claim was a claim for breach of the collective bargaining agreement. *See id.*

120. *Id.*

121. *See id.* at 388 (the court never makes direct reference to *Farmer*). The court does discuss outrageous conduct under the decision in *Majors v. United States Air, Inc.*, 525 F. Supp. 853 (D. Md. 1981). *Id.* at 387-88. However, the *Majors* court held that the claims of the plaintiff were inextricably intertwined with a collective bargaining agreement and preempted under the *Magnuson* rule. *Majors*, 525 F. Supp. at 856-57.

122. *DeTomaso v. Pan Am. World Airways, Inc.*, 43 Cal. 3d 517, 529-30, 733 P.2d 614, 621, 235 Cal. Rptr. 292, 299 (1987). *See infra* note 199 and accompanying text (discussion by the *DeTomaso* court regarding the focus of the *Raybourn* court).

123. *See infra* notes 201-15 and accompanying text (discussion of the inconsistency between *Raybourn* and *Andrews*).

124. *See infra* notes 125-51 and accompanying text (discussion of FELA claims in relation to RLA preemption).

125. Federal Employers' Liability Act, Pub. L. No. 60-100, 35 Stat. 65 (1908) (codified as amended at 45 U.S.C. §§ 51-60 (1982 & Supp. III 1985)). Section 51 provides, in pertinent part: "Every common carrier by railroad while engaging in commerce between any of the several States or Territories . . . shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce . . ." 45 U.S.C. § 51 (1908).

126. *Atchison, T. & S.F. Ry. v. Buell*, 107 S. Ct. 1410, 1413 (1987).

127. *Id.* at 1410.

Court held that the RLA does not preclude a FELA claim for damages merely because the conduct causing the injury is possibly subject to RLA arbitration.¹²⁸ The FELA provides substantive protection against conduct that is independent of the obligations of an employer under the collective bargaining agreement.¹²⁹ In addition, the Act provides recovery of money damages,¹³⁰ unlike the limited relief of back pay and reinstatement that is available through RLA arbitration.¹³¹ *Buell* is consistent with the *Magnuson* rule¹³² because the FELA claim for tortious physical injury was not inextricably intertwined with the collective bargaining agreement.¹³³

In *Balzeit v. Southern Pacific Transportation Co.*,¹³⁴ Balzeit brought an action for infliction of emotional distress.¹³⁵ Balzeit alleged that his employer attempted to prevent him from continuing to retain legal counsel in pursuit of a FELA claim against his employer.¹³⁶ The court characterized the attempt of the employer to deny Balzeit his fundamental right to counsel as outrageous conduct within the *Farmer* exception.¹³⁷ Utilizing the *Farmer* exception was unnecessary because the court ruled that the claim for infliction of emotional distress did not flow from the employer's alleged wrongful refusal to reinstate.¹³⁸ Instead, the claim arose from the employer's alleged attempt to prevent Balzeit from continuing to retain legal counsel in pursuit of the FELA claim.¹³⁹ Consequently, Balzeit's state tort claim was not inextricably intertwined with the collective bargaining agreement and hence not preempted under the *Magnuson* rule.¹⁴⁰

In *Lewy v. Southern Pacific Transportation Co.*,¹⁴¹ the court held that the RLA preempted a claim for retaliatory discharge.¹⁴² The

128. *Id.* at 1415. The RLA has no effect upon a worker's right to collect damages under the FELA. *Id.* at 1417.

129. *Id.* at 1415.

130. 45 U.S.C. § 51 (1908).

131. *Buell*, 107 S. Ct. at 1415 & n.12.

132. See *supra* text accompanying notes 102-09 (discussion of the *Magnuson* rule).

133. See *Buell*, 107 S. Ct. at 1415-16. See also *Magnuson v. Burlington N., Inc.*, 576 F.2d 1367, 1369 (9th Cir. 1978) (claim for intentional infliction of emotional distress inextricably intertwined with the grievance and arbitration procedures of the collective bargaining agreement).

134. 569 F. Supp. 986 (N.D. Cal. 1983).

135. *Id.* at 990 (the opinion does not specify whether the infliction of emotional distress was intentional or negligent).

136. *Id.*

137. *Id.* at 989.

138. *Id.* at 990.

139. *Id.*

140. See *Magnuson v. Burlington N., Inc.*, 576 F.2d 1367, 1369 (9th Cir. 1978) (claim for intentional infliction of emotional distress inextricably intertwined with the grievance and arbitration procedures of the collective bargaining agreement).

141. 799 F.2d 1281 (9th Cir. 1986).

142. *Id.* at 1292 (Lewy alleged that the discharge was in retaliation to his initiation of a FELA action against his employer).

court reasoned that two significant policies underlying the RLA prevented Lewy from characterizing his claim for breach of the collective bargaining agreement as a tortious discharge.¹⁴³ First, permitting the state claim would circumvent the policy that railroad labor disputes should be resolved through grievance and arbitration procedures rather than by litigation.¹⁴⁴ Second, recovery for emotional injuries resulting from wrongful discharge is contrary to the RLA policy of limiting employee remedies to reinstatement and back pay.¹⁴⁵ The *Lewy* decision is consistent with the *Magnuson* rule because a retaliatory discharge claim is inextricably intertwined with the grievance and arbitration procedures of the collective bargaining agreement.¹⁴⁶

In *Pikop v. Burlington Northern R.R.*,¹⁴⁷ the plaintiff brought a claim for intentional infliction of emotional distress against the railroad.¹⁴⁸ Pikop alleged that she was sexually assaulted by her supervisor and continually harassed by her employees.¹⁴⁹ The court found that the continual pattern of harassment constituted outrageous conduct under the *Farmer* exception.¹⁵⁰ Therefore, the court concluded that neither the RLA nor the FEOLA preempted Pikop's claim for intentional infliction of emotional distress.¹⁵¹

A unified analysis of RLA preemption appears in the decision of *DeTomaso v. Pan American World Airways, Inc.*¹⁵² The facts and

143. *Id.* at 1290-91.

144. *Id.* at 1290.

145. *Id.* at 1291.

146. *See id.* at 1290-91. To determine whether a retaliatory discharge is wrongful or tortious requires an interpretation of the terms of the collective bargaining agreement. *See Magnuson v. Burlington N., Inc.*, 576 F.2d 1367, 1369 (9th Cir. 1978) (claims for wrongful discharge are inextricably intertwined with the grievance and arbitration procedures of the collective bargaining agreement).

147. 390 N.W.2d 743 (Minn. 1986).

148. *Id.* at 744. Pikop, a seasonal-crew worker for the railroad, alleged that her supervisor sexually assaulted her on several occasions, despite her complaints to railroad officials. *Id.* at 745. In addition, Pikop alleged that she was subject to continual harassment by co-employees, who repeatedly called her "pig," "bitch," and "cunt" and repeatedly assaulted her. *Id.* Furthermore, Pikop alleged that certain co-employees constantly threatened her with rat carcasses and repeatedly forced her to watch or participate in the mutilation and torture of rats and birds. *Id.* Finally, Pikop alleged that railroad supervisors allowed this conduct on the part of her co-employees to take place repeatedly. *Id.*

149. *Id.*

150. *Id.* at 750, 752-53. *Pikop* illustrates that *Farmer* has applicability in the context of the FEOLA as well as in the contexts of the NLRA, the LMRA, and the RLA.

151. *Id.* at 744-45, 753.

152. *DeTomaso v. Pan Am. World Airways, Inc.*, 43 Cal. 3d 517, 526-33, 733 P.2d 614,

opinion in *DeTomaso* are presented below.¹⁵³ Thereafter, this Note will reexamine the *Magnuson* and *Raybourn* rules in connection with the legal ramifications of *DeTomaso*.¹⁵⁴

II. THE CASE

A. The Facts

John DeTomaso worked in the cargo department of Pan American World Airways, Inc. (Pan Am).¹⁵⁵ On September 19, 1978, DeTomaso purchased two bins of cargo from his supervisor.¹⁵⁶ Both DeTomaso and his supervisor believed that the bins were abandoned cargo.¹⁵⁷ One of the bins contained batteries which DeTomaso attempted to sell to Texas Instruments.¹⁵⁸ DeTomaso was unaware that the batteries were cargo to be transferred to Continental Airlines (Continental).¹⁵⁹

After Continental noted similar batteries as a delinquent shipment, Texas Instruments notified Continental of DeTomaso's offer.¹⁶⁰ Pan Am agents questioned DeTomaso regarding the purchase and determined that the batteries in DeTomaso's possession were part of Pan Am's recent shipments.¹⁶¹ One of the Pan Am agents made a statement to DeTomaso which DeTomaso's son interpreted as an accusation of theft.¹⁶² At trial, a psychiatrist whom DeTomaso consulted in 1980 testified that the conduct of Pan Am caused DeTomaso to experience physical pain, appendicitis, and depression.¹⁶³

619-24, 235 Cal. Rptr. 292, 297-302 (1987) (analyzing RLA preemption in terms of case law from *Andrews v. Louisville & Nashville R.R.* to *Magnuson v. Burlington Northern, Inc.* and *Raybourn v. Burlington Northern Ry.*, including references to cases governed by the National Labor Relations Act (NLRA), Labor Management Relations Act (LMRA) and the Federal Employers' Liability Act (FELA)).

153. See *infra* notes 155-85 and accompanying text (discussion of the facts in *DeTomaso*). See *infra* notes 186-94 and accompanying text (discussion of the opinion in *DeTomaso*).

154. See *infra* notes 195-227 and accompanying text (discussion of the legal ramifications of the decision in *DeTomaso*).

155. *DeTomaso*, 43 Cal. 3d at 520, 733 P.2d at 615, 235 Cal. Rptr. at 293.

156. *Id.*

157. *Id.*

158. *Id.* at 521, 733 P.2d at 615, 235 Cal. Rptr. at 293.

159. *Id.*

160. *Id.*, 733 P.2d at 615-16, 235 Cal. Rptr. at 293-94.

161. *Id.*, 733 P.2d at 616, 235 Cal. Rptr. at 294 (the determination was made from identifiable air waybill numbers on the battery cartons).

162. *Id.* (the statements were made during the course of the investigation).

163. *Id.* at 522, 733 P.2d at 616, 235 Cal. Rptr. at 294 (in November of 1987, DeTomaso experienced pain which culminated in the removal of his appendix and a growth on his intestine). Thereafter, DeTomaso experienced continual depression and physical discomfort. *Id.*

The Teamsters Union, Local 2707 represented all employees in the cargo department of Pan Am.¹⁶⁴ The union and Pan Am were parties to a collective bargaining agreement (the agreement), which specified formal RLA procedures for disciplining or discharging airline employees.¹⁶⁵ Employees could not be disciplined or discharged without an investigation by an airline official.¹⁶⁶ In addition, employees who believed they were treated unjustly could present a grievance.¹⁶⁷

During further investigation of DeTomaso, Pan Am officials informed a local union representative that Pan Am was considering discharging DeTomaso on grounds of theft.¹⁶⁸ On January 11, 1979, Pan Am discharged DeTomaso for fraud, dishonesty, and abuse of company policy.¹⁶⁹ DeTomaso immediately filed a grievance claiming that his termination violated the agreement.¹⁷⁰ A hearing resulted in a denial of the grievance on the ground that DeTomaso's actions violated the employee rules of conduct.¹⁷¹ On March 9, 1979, DeTomaso appealed¹⁷² to the Western Regional Field Board of Adjustment.¹⁷³ On appeal, a settlement was reached which reinstated DeTomaso with back pay, retroactive seniority, and benefits in exchange for DeTomaso's withdrawal of the grievance.¹⁷⁴

Prior to his discharge, DeTomaso brought an action against Pan Am in state court for damages claiming breach of warranty of title, negligent and intentional infliction of emotional distress, and defamation.¹⁷⁵ In an amended complaint, DeTomaso deleted the claim for negligent infliction of emotional distress.¹⁷⁶ A divided jury awarded DeTomaso \$265,000 in general damages and \$300,000 in punitive damages, without allocating the award between the tort and warranty

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.* at 522-23, 733 P.2d at 616-17, 235 Cal. Rptr. at 294-95 (Pan Am notified the local union representative pursuant to the agreement).

169. *Id.* at 523, 733 P.2d at 617, 235 Cal. Rptr. at 295.

170. *Id.*

171. *Id.*

172. *Id.* (DeTomaso appealed pursuant to the agreement).

173. *Id.* See *supra* text accompanying note 85 (the Western Regional Field Board of Adjustment is an entity established pursuant to Title 45 of the United States Code section 184 for the purpose of resolving employment disputes in the airline industry).

174. *DeTomaso*, 43 Cal. 3d at 523, 733 P.2d at 617, 235 Cal. Rptr. at 295.

175. *Id.* (the claim for intentional infliction of emotional distress was based on the allegation that Pan Am had wrongfully terminated DeTomaso and falsely accused DeTomaso of fraud).

176. *Id.*

claims.¹⁷⁷ Pan Am moved for judgment notwithstanding the verdict or, in the alternative, for a new trial or a remittitur.¹⁷⁸ The trial court granted the motion for a new trial on the limited issue of damages, subject to the condition that if DeTomaso would agree to accept a remittitur by a reduction of \$358,393, then the motion would be denied.¹⁷⁹

DeTomaso refused the remittitur and appealed the granting of a new trial by the lower court.¹⁸⁰ The basis of the appeal was that the trial court failed to specify the grounds upon which it granted the motion for new trial¹⁸¹ in violation section 657 of the Code of Civil Procedure.¹⁸² Pan Am cross-appealed asserting that the RLA preempted DeTomaso's state tort claims.¹⁸³ The Court of Appeal reinstated the judgment as the trial court had failed to comply with Code of Civil Procedure section 657.¹⁸⁴ Pan Am appealed to the California Supreme Court on the issue of preemption.¹⁸⁵

B. The Opinion

The California Supreme Court asserted that the policies underlying the RLA require that RLA preemption not be limited to suits alleging contract violations.¹⁸⁶ Moreover, the court stated that allowing an employee to institute a civil action by litigating the questions at issue in arbitration would undermine the value of arbitration as a dispute resolution tool.¹⁸⁷ The court held that the RLA preempts state claims based on facts which are related to matters expressly or impliedly governed by the collective bargaining agreement.¹⁸⁸ However, the

177. *Id.* at 524, 733 P.2d at 617, 235 Cal. Rptr. at 295.

178. *Id.*

179. *Id.*

180. *Id.*, 733 P.2d at 617, 235 Cal. Rptr. at 295-96.

181. *Id.* at 524 & n.6, 733 P.2d at 617 & n.6, 235 Cal. Rptr. at 295-96 & n.6.

182. CAL. CIV. PROC. CODE § 657 (West 1976). Section 657 provides in pertinent part: "When a new trial is granted, on all or part of the issues, the court shall specify the ground or grounds upon which it is granted and the court's reason or reasons for granting the new trial upon each ground stated." *Id.*

183. *DeTomaso*, 43 Cal. 3d at 524, 733 P.2d at 618, 235 Cal. Rptr. at 296.

184. *Id.*

185. *Id.*

186. *Id.* at 528, 733 P.2d at 620, 235 Cal. Rptr. at 298 (noting the consistency with the United States Supreme Court in *Allis-Chalmers* that LMRA preemption not be limited to suits for breach of contract). *Allis-Chalmers* extended the preemption principle articulated in *Lucas Flour* to include suits other than breach of contract. See *supra* text accompanying notes 52-59 (discussion of *Allis-Chalmers* and *Lucas Flour*).

187. *Id.* 733 P.2d at 620-21, 235 Cal. Rptr. at 298-99.

188. *Id.* at 529, 733 P.2d at 621, 235 Cal. Rptr. at 289-99. The first step of the *DeTomaso*

court recognized an exception to conduct which so far exceeds the scope of reasonableness that reference to the collective bargaining agreement is unnecessary to resolve the claim.¹⁸⁹

The court found that the allegedly defamatory statements¹⁹⁰ by Pan Am agents occurred during the course of an investigation mandated by the collective bargaining agreement.¹⁹¹ Furthermore, the court decided that the conduct during the investigation was governed by the agreement.¹⁹² According to the court, the abuses alleged by DeTomaso were remediable, if at all, only through the grievance and arbitration provisions of the collective bargaining agreement.¹⁹³ The court concluded that a judicial determination of the reasonableness of the required investigation would undermine the exclusiveness of the grievance and arbitration procedures.¹⁹⁴

III. LEGAL RAMIFICATIONS

In adopting the *Magnuson* rule¹⁹⁵ with the *Farmer* exception¹⁹⁶ and rejecting the *Raybourn* rule,¹⁹⁷ the California Supreme Court resolved

preemption test is the *Magnuson* rule, whether the claim is inextricably intertwined with the grievance and arbitration procedures of the collective bargaining agreement. *Id.* at 527-28, 733 P.2d at 620, 235 Cal. Rptr. at 298.

189. *Id.* at 529, 733 P.2d at 621, 235 Cal. Rptr. at 299. The second step of the test is the *Farmer* exception, whether the employer's conduct is "outrageous." *Id.* at 531, 733 P.2d at 622-23, 235 Cal. Rptr. at 300-01.

190. *DeTomaso*, 43 Cal. 3d at 530, 733 P.2d at 622, 235 Cal. Rptr. at 300 (the allegedly defamatory statements were made in the presence of DeTomaso's family and to a local union representative). The statements suggested that DeTomaso was a thief. *Id.* at 521 & n.5, 733 P.2d at 616 & n.5, 235 Cal. Rptr. at 294 & n.5.

191. *Id.* at 530, 733 P.2d at 622, 235 Cal. Rptr. at 300. The court not only found that the RLA preempted the defamation claim, but also that the allegedly defamatory statements were privileged under California Civil Code section 47 and hence could not be considered defamatory. *Id.* California Civil Code section 47 states, in relevant part: "A privileged publication or broadcast is one made . . . [i]n any (1) legislative or (2) judicial proceeding, or (3) in any other official proceeding authorized by law, or (4) in the initiation or course of any other proceeding authorized by law and reviewable pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure." CAL. CIV. CODE § 47 (West 1982).

192. *DeTomaso*, 43 Cal. 3d at 530, 733 P.2d at 622, 235 Cal. Rptr. at 300.

193. *Id.*

194. *Id.* Congress expressly approved contract grievance procedures as a preferred method for settling disputes. *Republic Steel v. Maddox*, 379 U.S. 650, 653 (1965). If a grievance procedure cannot be made final, then the procedure loses much of its desirability as a method of settlement. *Id.* A rule creating nonexclusive grievance procedures would inevitably exert a disruptive influence upon both the negotiation and administration of collective bargaining agreements. *Teamsters Local v. Lucas Flour Co.*, 369 U.S. 95, 103 (1962).

195. *Magnuson v. Burlington N., Inc.*, 576 F.2d 1367, 1369 (9th Cir. 1978) (the RLA

a conflict among the California Courts of Appeal as to when the RLA preempts state tort claims.¹⁹⁸ More importantly, *DeTomaso* exposes the deficiencies of the *Raybourn* rule¹⁹⁹ and clarifies analysis of RLA preemption.²⁰⁰ The *Raybourn* rule is inconsistent with *Andrews* and *Allis-Chalmers* (LMRA) in terms of legal independency and the "substance/characterization distinction."²⁰¹ The *Raybourn* rule ignores the substance of a state claim and instead focuses on whether the claim is legally independent of the collective bargaining agreement.²⁰² In contrast, *Andrews* requires an examination of the substance, as opposed to the characterization, of a state claim for purposes of RLA preemption analysis.²⁰³

preempts state tort claims which are inextricably intertwined with the grievance and arbitration procedures of the collective bargaining agreement).

196. *Farmer v. Local 25, United Bhd. of Carpenters*, 430 U.S. 290, 302 (1977) (the RLA does not preempt state tort claims based on outrageous conduct).

197. *Raybourn v. Burlington N. R.R.*, 602 F. Supp. 385, 387-88 (W.D. Mo. 1985) (the RLA does not preempt state tort claims which are legally independent of the collective bargaining agreement, provided there exists a substantial state interest and the claim will not interfere with the purpose of the RLA).

198. *DeTomaso v. Pan Am. World Airways, Inc.*, 43 Cal. 3d 517, 520, 733 P.2d at 614, 615, 235 Cal. Rptr. at 202, 293 (1987). See *supra* text accompanying notes 188-89 (discussing the relationship between the *DeTomaso* test and both the *Magnuson* rule and the *Farmer* exception). Compare *Miller v. United Airlines, Inc.*, 174 Cal. App. 3d 878, 889, 220 Cal. Rptr. 684, 691 (1985) (following *Magnuson*) with *DeTomaso v. Pan Am. World Airways, Inc.*, 184 Cal. App. 3d 344, 352, 354, 220 Cal. Rptr. 493, 498-500 (1985) (following *Raybourn*).

199. *DeTomaso*, 43 Cal. 3d at 529-30, 633 P.2d at 621, 235 Cal. Rptr. at 299. The *DeTomaso* court asserted:

[T]he [*Raybourn*] court failed to follow the dictates of *Andrews* . . . and *Magnuson* . . . and did not analyze the substance of the claim, rather than its terminology, to determine whether it was in fact premised on the collective bargaining agreement or inextricably intertwined with its grievance machinery. Instead, the court simply stated, in a conclusory fashion, that since the employee's claim was a "typical tort claim," it was not preempted.

Id. (citations omitted).

200. See *id.* (by analyzing the *Raybourn* rule in terms of the *Andrews* "substance/characterization distinction" and legal independency test).

201. See *supra* text accompanying notes 113-22 (discussion of the inconsistency between *Raybourn* and *Andrews* in terms of legal independency and the "substance/characterization distinction" concerning RLA claims). See *supra* text accompanying note 58 (discussion of legal independency concerning claims relating to section 301 of the LMRA).

202. See *Raybourn v. Burlington N. R.R.*, 602 F. Supp. 385, 387 (1985) ("typical tort claims" are not preempted by the RLA notwithstanding that they are factually related to a claim for breach of the collective bargaining agreement). See *supra* text accompanying notes 110-13, 117-22 (discussion of *Raybourn*).

203. See *Andrews v. Louisville & N. R.R.*, 406 U.S. 320, 323-24 (1972). See *supra* text accompanying notes 93-100, 114-15, 120 (discussion of the "substance/characterization distinction" and legal independency test of *Andrews*). See also, *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 215-16 (1985) (refusing to characterize a section 301 LMRA claim for breach of a collective bargaining agreement as a bad faith breach of contract).

The inconsistency in the *Raybourn* and *Andrews* tests for legal independency stems from the permissible relationship between the underlying facts and the state claim.²⁰⁴ In applying the *Andrews* test, legal independency is determined by the *factual* composition of the claim.²⁰⁵ Under the *Andrews* test, a claim is legally independent from federal remedies only when the facts do not give rise to a claim for breach of the collective bargaining agreement.²⁰⁶ Thus, if the facts give rise to both a breach of the collective bargaining agreement and to some other state claim, the state claim is preempted under *Andrews*.²⁰⁷ On the other hand, in applying the *Raybourn* test, legal independency is determined by the relationship between the *legal* composition of the state tort claim and the claim for breach of the collective bargaining agreement.²⁰⁸ The *Raybourn* test focuses on whether the essential legal elements of the two claims are distinct without considering the factual composition of each claim or the factual relationship between the claims.²⁰⁹ Consequently, the *Raybourn* court deems "typical tort claims" sufficiently distinct from breach of contract claims regardless of whether the claims are factually related.²¹⁰

A state tort claim and a claim for breach of the collective bargaining agreement may be factually related without being composed of identical facts.²¹¹ If the set of facts common to both claims is

204. See *supra* text accompanying note 114 (discussion legal independency under *Andrews*). See *supra* text accompanying notes 110-12, 117 (discussion of legal independency under *Raybourn*).

205. See *Andrews*, 406 U.S. at 324 (the factual composition consists of the underlying set of facts giving rise to the claim). See also *Magnuson v. Burlington N., Inc.* 576 F.2d 1367, 1369 (9th Cir. 1978) (claims based on a matrix of facts which are inextricably intertwined with the grievance and arbitration procedures of the collective bargaining agreement are preempted by the RLA). The *Magnuson* rule determines whether a claim is inextricably intertwined with the collective bargaining agreement based on the factual composition of the claim. See *id.* See *supra* text accompanying notes 102-09, 113 (discussion of the *Magnuson* rule).

206. See *Andrews*, 406 U.S. at 324.

207. See *id.*

208. See *Raybourn v. Burlington N. R.R.*, 602 F. Supp. 385, 387 (1985) (the legal composition consists of the essential legal elements of the claim).

209. See *id.* Factual relationship differs from factual composition in the sense that two claims may be factually related (i.e., share common facts) without being composed of identical facts. See, e.g., *Raybourn*, 602 F. Supp. at 387 (Raybourn's state tort claims for false arrest and imprisonment were factually related to his breach of contract claim based on wrongful discharge, but the claims did not share identical facts).

210. *Raybourn*, 602 F. Supp. at 387. The *Raybourn* court stated: "While the plaintiff's breach of contract claim may be factually related, and must be processed in another manner, it is sophistry to contend this typical tort claim is covered by, or precluded by, the Railway Labor Act." *Id.*

211. See *supra* text accompanying note 209 (distinguishing factual relationship from factual composition).

sufficient to give rise to the claim for breach of the collective bargaining agreement,²¹² then the state tort claim will be preempted under *Andrews*²¹³ and *Magnuson*²¹⁴ but not under *Raybourn*.²¹⁵ Therefore, the *Raybourn* rule, premised upon distinct legal composition instead of factual composition and relationship, is distinguishable from the *Magnuson* rule.²¹⁶ The two rules will be further distinguished below by applying the *Magnuson* rule to the facts of *Raybourn*.²¹⁷

Raybourn's claims for false arrest and imprisonment were based on conduct by railroad representatives who were acting under the belief that Raybourn was intoxicated during working hours.²¹⁸ The allegedly tortious conduct of the representatives occurred in the employment setting,²¹⁹ although the conduct did not occur in the context of a disciplinary investigation as in *DeTomaso*.²²⁰ At the time the allegedly tortious conduct occurred, the grievance and arbitration procedures of the collective bargaining agreement were applicable.²²¹

212. See, e.g., *Raybourn*, 602 F. Supp. at 386 (conduct on the part of the railroad representatives was sufficient to give rise to a federal claim for breach of the collective bargaining agreement as well as to state claims of false arrest and imprisonment).

213. See *Andrews v. Louisville & N. R.R.*, 406 U.S. 320, 324 (1972) (state claim for wrongful discharge based on facts giving rise to a federal claim for breach of employment contract preempted by the RLA).

214. See *Magnuson v. Burlington N., Inc.*, 576 F.2d 1367, 1369 (9th Cir. 1978) (state claim for intentional infliction of emotional distress based on a matrix of facts giving rise to a federal claim for wrongful discharge arising out of a breach of the collective bargaining agreement preempted by the RLA).

215. See *Raybourn v. Burlington N. R.R.*, 602 F. Supp. 385, 387 (1985) (state tort claims for false arrest and imprisonment based on facts giving rise to a claim for breach of the collective bargaining agreement not preempted by the RLA because the state tort claims deemed legally independent).

216. See *DeTomaso v. Pan Am. World Airways, Inc.*, 43 Cal. 3d 517, 527-30, 733 P.2d 614, 619-21, 235 Cal. Rptr. 292, 297-300 (1987) (the *Raybourn* rule is inconsistent with the *Magnuson* rule).

217. See *infra* notes 218-27 and accompanying text (discussion of the *Magnuson* rule applied to the facts of *Raybourn*).

218. *Raybourn v. Burlington N. R.R.*, 602 F. Supp. 385, 385-86 (W.D. Mo. 1985). See *supra* text accompanying note 111 (discussion of the facts of *Raybourn*).

219. *Raybourn*, 602 F. Supp. at 385-86 (the representatives took Raybourn from the work premises to a hospital during the course of working hours).

220. *Id.* (although the representatives were investigating Raybourn's possible intoxication, the representatives were not conducting a disciplinary investigation). In *DeTomaso*, the Pan Am agents conducted a formal disciplinary investigation, pursuant to the collective bargaining agreement. *DeTomaso v. Pan Am. World Airways, Inc.*, 43 Cal. 3d 517, 521-23, 733 P.2d 614, 616-17, 235 Cal. Rptr. 292, 294-95 (1987).

221. See *DeTomaso*, 43 Cal. 3d at 529-30, 733 P.2d at 621-22, 235 Cal. Rptr. at 299-300. The *Raybourn* court incorrectly reasoned that the grievance and arbitration procedures first applied when Raybourn appealed his termination from employment, after the allegedly tortious conduct occurred. *Raybourn*, 602 F. Supp. at 386. Since the allegedly tortious conduct occurred within the context of the employment relation, the conduct was inextricably intertwined with the collective bargaining agreement. See *Magnuson v. Burlington N., Inc.*, 576 F.2d 1367, 1369 (9th Cir. 1978).

Applying the *Magnuson* rule, Raybourn's claims for false arrest and imprisonment were inextricably intertwined with the collective bargaining agreement and should have been preempted by the RLA,²²² unless the claims were based on "outrageous" conduct under the *Farmer* exception.²²³

The *Raybourn* court held that the state tort claims were legally independent of any potential claims for breach of the collective bargaining agreement based on wrongful discharge and thus not preempted by the RLA.²²⁴ Despite the implication by the *Raybourn* court that the conduct of the investigators was "outrageous,"²²⁵ the court would have upheld the state tort claims had the conduct not been "outrageous."²²⁶ Hence, absent "outrageous" conduct, application of the *Magnuson* rule to the facts of *Raybourn* yields an outcome contrary to the result reached under the *Raybourn* rule.²²⁷

CONCLUSION

The *Raybourn* rule is deficient in a number of respects and should be abandoned in favor of the *Magnuson* rule. *Raybourn* is inconsistent with *Andrews* (RLA), *Allis-Chalmers* (LMRA), and *Garmon* (NLRA). Furthermore, the *Raybourn* rule, in allowing a plaintiff to characterize a claim for breach of the collective bargaining agreement as a state tort claim, subverts the congressional policy underlying federal law labor preemption.

The RLA grievance and arbitration procedures provide employees with prompt resolution of disputes through the limited remedies of reinstatement and back pay. The premise of RLA preemption is that the speed and informality of the grievance and arbitration procedures provide a *quid pro quo* for the relinquishment of the right to litigate a claim and seek punitive damages. Congress intended federal law to be the exclusive remedy in resolving claims for breach of the

222. See *Magnuson*, 576 F.2d at 1369 (claim for intentional infliction of emotional distress inextricably intertwined with the grievance and arbitration procedures of the collective bargaining agreement and preempted by the RLA). See *supra* text accompanying notes 102-09 (discussion of the *Magnuson* rule).

223. *Magnuson*, 576 F.2d at 1369 (recognizing the *Farmer* exception for "outrageous" conduct). See *supra* text accompanying notes 106-09 (discussion of the *Farmer* exception).

224. *Raybourn v. Burlington N. R.R.*, 602 F. Supp. 385, 387-88 (1985).

225. See *id.* at 388 (omitting direct reference to *Farmer*).

226. See *id.* at 387-88 (the court holding that the state tort claims were legally independent of the claim for breach of the collective bargaining agreement irrespective of the conduct being "outrageous").

227. See *supra* text accompanying notes 218-26 (*Raybourn's* state tort claims are preempted under the *Magnuson* rule but not under the *Raybourn* rule).

collective bargaining agreement. A plaintiff cannot change the federal remedy by filing a state claim.

In summary, any utility derived from the *Raybourn* rule does not counterbalance the inconsistency and confusion which the rule adds to the field of RLA preemption. *DeTomaso* precludes any use of *Raybourn* in California. Given the recent rulings in *Caterpillar, Inc. v. Williams*²²⁸ (LMRA) and *Atchison, Topeka & Santa Fe Ry. v. Buell*²²⁹ (RLA and FELA), the United States Supreme Court would likely adopt *Magnuson* and reject *Raybourn*.

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228. 55 U.S.L.W. 4804, 4806 (U.S. June 9, 1987) (No. 86-526) (state claims which are substantially dependent upon the terms of a collective bargaining agreement are preempted by section 301 of the LMRA). See *supra* text accompanying notes 60-63 (discussion of the *Caterpillar* decision).

229. 107 S. Ct. 1410 (1987). FELA claims are not inextricably intertwined with RLA collective bargaining agreements. See *id.* at 1415. See *supra* text accompanying notes 127-33 (discussion of the *Buell* decision).

